

## CONSTRUCTION BOARD OF APPEALS MINUTES

MAY 2, 2005, 7:00 A.M.  
COMMUNITY CONFERENCE ROOM

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MEMBERS PRESENT: Dave Fisher, Ed Noonan and Ron Clark

MEMBERS ABSENT: John Glover, Bruce Bermel and Clinton Collins

STAFF PRESENT: Steve Kirchman, Chief Building Official  
Bev Haw, Building Dept. Secretary

OTHERS PRESENT: Brad Colehour, Edina property owner, 5516/5520 France Ave. S.  
Mark Hornig, 5315 Malibu Dr.

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Ed Noonan, Vice Chair, called the meeting to order at 7:05 a.m.

### ROLL CALL

#### APPROVAL OF MINUTES:

April 25, 2005 meeting minutes approved.

AGENDA ITEM 1: Appeal – continued from April 25, 2005 meeting. Case #CBA05-02, Consider waiver of City requirement for separate sewer and water connections for double dwelling unit buildings. Edina City Code, Section 445.02. Mr. Brad Colehour regarding property located at 5516-5520 France Ave. S.

Mr. Noonan opened the meeting with a review of the tie vote situation. Mr. Kirchman presented further explanation with regard to a tie vote of the Appeals Board. Mr. Kirchman stated that according to the Robert's Rules of Order a tie vote defeats the motion. The motion on the floor was to deny the waiver, so that motion was defeated and the waiver is denied. The City Attorney has suggested that in fairness to the applicant this issue should be carried over and voted on again. Mr. Noonan asked for any additional information. Mr. Colehour responded by passing out a document which he had prepared offering additional information. Mr. Colehour researched files at the City that have already been split; at least 11 did not have separate sewer and water installed. Mr. Colehour stated that he had a water pressure test performed and the water pressure at 5560 is 82 PSI and at 5520 is 80 PSI. That is average residential water pressure. Two families have lived at this location for 46 years and it has not been a problem. Mr. Colehour further stated that the Edina City Attorney had approved the Party Wall Agreement that he had presented as the proper resolution to any kind of water problem or sewer issue. The price of these units would not meet any Federal threshold for affordable housing. Mr. Colehour attended a class led by an attorney who was on the committee to write up the revised statute for CIC law.

Mr. Colehour was told that it is very uncommon for communities to require new sewer and water connections in established dwellings. Mr. Colehour checked with the County regarding road work on France Ave. and was told that they would put time of day restraints on any work being done. Mr. Colehour stated that the Planning Commission had approved this agreement as it was written up.

Mr. Noonan opened the meeting for discussion. Mr. Fisher stated that he still does not see any hardship represented in this case. Discussion followed regarding "hardship". Mr. Kirchman stated that a hardship is necessary in order to approve this waiver. Mr. Noonan stated that he did not think that work on France Ave. would cause a problem. Mr. Noonan also indicated a concern that a ¾" water line is not adequate and this would be the opportunity to upgrade this service for future homeowners. Mr. Clark stated that a precedent has been established in that this has been allowed in the past. Mr. Noonan told Mr. Colehour that this issue could be appealed to the City Council. Mr. Kirchman stated that the water pressures appeared to be adequate, however, the high velocity could cause additional wear and tear on the copper pipes and there is no ability to regulate that water pressure with additional construction in the area.

Mr. Noonan requested a motion. Mr. Fisher made a motion to deny the waiver. Mr. Noonan requested a vote. Mr. Fisher and Mr. Noonan voted to deny the waiver and Mr. Clark voted to approve. The motion was carried to deny the waiver. Mr. Colehour was told that he could appeal this to the City Council.

AGENDA ITEM #2: Case #CBA05-03, Consider waiver of City requirement for separate sewer and water connections for double dwelling unit buildings. Edina City Code, Section 445.02. Mr. Mark Hornig, 5315 Malibu Dr., Edina, MN 55436

Mr. Noonan asked for Mr. Hornig to please state his case to the board. Mr. Hornig said that he is owner/occupant in unit at 5315 Malibu Dr. Over the past 4 years several of the units on Malibu Dr have been split up and sold as separate units. Mr. Hornig and his wife have accepted an offer to purchase one side of the dwelling in which he resides. Discussion followed regarding the sale of property on Malibu recently. These are the only two issues of this type that has been brought to the attention of the board within at least the past 5 years. Mr. Fisher stated again that no hardship has been presented and it cannot be merely an inconvenience. Mr. Clark also stated that he is consistent in his thinking, he pulls building permits everyday for 4-plex, 8-plex and 16-plex units with 1 water service and it is either a CIC agreement or as in this case a Party Wall Agreement takes away any risk of having a misunderstanding between the two owners. Mr. Clark feels that the Party Wall Agreement establishes the rules of the game as to who pays for what. Mr. Kirchman stated that this unit does have a 1" water line. Discussion followed that these individuals have the opportunity to take this to the City Council and would possibly provide an opportunity to review the City Code and review the "hardship" portion of it to determine if the code should be revised. Mr. Noonan stated that this would be the time to improve this property to establish separate water service.

Mr. Noonan requested a motion. Mr. Fisher made a motion to deny the waiver. Vote was taken. Mr. Noonan and Mr. Fisher voting to deny the waiver and Mr. Clark voting to approve. Request was denied. Mr. Kirchman will follow up with notifications and appeal process. If this appeal does go to the City Council it will give the board an opportunity to see how the Council is leaning on this issue and review this code. Some discussion followed regarding this code requirement.

#### ADDITIONAL BUSINESS

Mr. Kirchman stated that some issues may require another meeting, however, nothing definite at this time. Mr. Kirchman reviewed term limits of board members; Bruce Bermel and Ron Clark – Feb. 1, 2006, Quentin Collins and Ed Noonan – Feb. 1, 2007 and Dave Fisher and John Glover – Feb. 1, 2008.

ADJOURN. Mr. Fisher made a motion to adjourn and it was seconded by Mr. Noonan. Meeting adjourned at 7:25 a.m.

Respectfully submitted by Bev Haw, May 2, 2005.